

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Unbundled Access to Network Elements)	WC Docket No. 04-313
)	
Review of the Section 251 Unbundling)	CC Docket No. 01-338
Obligations of Incumbent Local Exchange)	
Carriers)	

MOTION TO EXTEND TIME IN WHICH TO FILE REPLY COMMENTS

The National Association of State Utility Consumer Advocates (“NASUCA”)¹ and the Office of the Ohio Consumers’ Counsel (“OCC”)², by their attorneys and pursuant to Section 1.46(b) of the Commission’s Rules, 47 C.F.R. § 1.46(b) (2003), hereby submits this motion to extend the time in which to file reply comments in the above-captioned proceeding. NASUCA and the OCC request that the reply comment deadline be extended to November 2, 2004. The circumstances in support of this request are set forth below.

On August 20, 2004, the Federal Communications Commission (“FCC” or “Commission”) released its Order and Notice of Proposed Rulemaking (“NPRM”) in this

¹ NASUCA is a voluntary, national association of 44 consumer advocates in 42 states and the District of Columbia, organized in 1979. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. See, e.g., 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205(b); Minn. Stat. Ann. Subdiv. 6; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General’s office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

² The OCC is the state agency designated by Ohio law to represent the interests of residential utility consumers before state and federal regulators and in the courts. See Ohio Rev. Code Chapter 4911.

proceeding.³ The Commission solicited comments on a panoply of issues involving unbundling rules to implement certain obligations under the Communications Act of 1934, as amended.⁴ The Commission's NPRM was intended to address the District of Columbia Circuit's (D.C. Circuit) decision in *United States Telecom Ass'n v. FCC*.⁵ Under the NPRM, the Commission advised that initial comments were to be filed 21 days after the publication of the NPRM in the Federal Register.⁶ Reply comments were due within 36 days after publication of the NPRM.⁷ The NPRM was published in the Federal Register on September 13, 2004. Hence, initial comments were filed on October 4, 2004, with replies to be filed on October 19, 2004.

The Commission itself has recognized the extreme time constraints of the reply comment period in this proceeding. On September 29, 2004, the Commission issued an order modifying the time provisions set forth in its August 20, 2004 protective order. The protective order set forth procedures for obtaining access and/or copies of confidential information found in initial comments. The process the Commission set in its August 20 protective order included the filing of "acknowledgement of confidentiality" forms and a time period (five business days) to respond to such requests. In its September 29, 2004, Order, the Commission expedited the process for making confidential data available by reducing the response time from five business

³ *In the Matter of Unbundled Access to Network Elements*, WC Docket No. 04-313, Order and Notice of Proposed Rulemaking (Aug. 20, 2004) ("NPRM").

⁴ *Id.*, ¶¶ 8-15.

⁵ *Id.*, ¶ 1, citing *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*").

⁶ NPRM, ¶ 32.

⁷ *Id.*

days to three business days.⁸ According to the Commission,

[a]lthough the expedited process we adopt here might not necessarily be warranted in other proceedings, we find sufficient reason to modify the timing provisions relating to notice and objections in this matter, under certain circumstances. In particular, we find that the complexity, scale, and scope of issues to be addressed in this proceeding, in combination with both the compressed time-frame between the comment and reply comment due dates and the likelihood that the comments will generate significant confidential filings of interest to other parties, strongly support this revised process.⁹

NASUCA filed initial comments on October 4, 2004. The OCC filed initial comments (both redacted and unredacted versions) at the Commission on or before October 4, 2004, pursuant to the terms of the protective order. A multitude of interested parties also filed comments, many of which contained confidential information.

After the initial comments were filed, NASUCA and the OCC began working on reply comments, utilizing the Commission's electronic comment filing system ("ECFS") as the source not only for determining what parties had filed initial comments, but also as a source for obtaining copies of parties' initial comments. Notably, the Commission at several places within its NPRM, directed parties to the ECFS as a source for downloading filings and comments, and noted the ECFS as a database to aid interested parties in their participation in the proceeding:

"Any interested party can research, retrieve, view, and print any document in the system,

⁸ Id. Indeed, foreseeing the tightness in the schedule for replies, counsel at the OCC, acting on behalf of NASUCA, took affirmative action to shorten the time lag for reviewing confidential filings. By correspondence dated Sept. 27, 2004, counsel filed at the FCC and served upon a number of parties, Acknowledgments of Confidentiality and Requests for Copies of confidential information. The filing was meant to begin the five-day period so that on October 4, 2004, confidential information from the parties would be received from the parties served. Unfortunately, those parties did not treat the filing as beginning the five-day period and counsel has experienced some delay in receiving the confidential information requested.

⁹ Order (Sept. 29, 2004), ¶ 3.

including comments and other proceedings filed by parties to prior and ongoing proceedings.”¹⁰

Heeding the Commission’s directive, NASUCA and the OCC relied on the FCC’s electronic filing system to provide it with notice of the initial comments filed in this case. Moreover, on a periodic basis, counsel has utilized the ECFS in this case for monitoring purposes.

It was not until October 13, 2004, that counsel was advised by the FCC’s Office of the Secretary, that such reliance was inadvisable. It was then that counsel learned that Verizon had filed initial individual comments on October 4, 2004 that were not yet, after nine days had passed, in the ECFS.¹¹ In fact, on October 13, 2004, when counsel contacted the office of the FCC’s Secretary voicing this concern, counsel was advised that there were a number of comments, in addition to Verizon’s, that had been filed on October 4, 2004, that were not in the ECFS. Counsel was advised to contact the FCC’s commercial copier, Best Copy and Printing Inc. (“BCPI”) as the only other source (short of a physical visit to the FCC filing room) for determining what parties had filed initial comments. Upon contacting BCPI, counsel determined that approximately twenty initial comments -- some from major stakeholders such as Verizon -- had been filed on October 4, 2004, but had not yet been placed in the ECFS.¹² Counsel is currently in the process of obtaining copies of such comments, but as of the date of this filing, has yet to receive all the newly discovered initial comments.

As this Commission itself noted, this proceeding is enormous in terms of the complexity, scale, and scope of issues that are to be addressed. Thus, it is not surprising that a number of the

¹⁰ NPRM, ¶¶ 41, 43.

¹¹ Counsel learned on October 13, 2004, from communication with Counsel for Verizon that Verizon had in fact filed individual comments on October 4. Counsel for Verizon advised that the FCC had not as of October 13, 2004, updated the ECFS for this docket to reflect the filing of Verizon’s initial comments.

¹² In addition, counsel contacted SBC Communications, Inc. (“SBC”) on October 14, 2004 to determine whether SBC had filed comments. SBC’s counsel confirmed that SBC had filed comments on October 4; neither ECFS nor BCPI had listed SBC as a party filing comments.

parties have filed quite lengthy comments. For example, Verizon's comments alone, which NASUCA and the OCC received on October 13, 2004, are 158 pages in length. SBC's comments, received by NASUCA and the OCC on October 14, 2004, are 130 pages long, plus attachments. These are but a few examples of the newly discovered initial comments that counsel is now reviewing in order to formulate Reply Comments.

Given these circumstances, a two-week extension is necessary in order for parties like NASUCA and the OCC to adequately prepare replies to the newly discovered initial comments. No party to this proceeding would be prejudiced by such an extension. Moreover, the FCC will benefit by permitting such additional time to parties, which will allow a broader scope to the replies, particularly from parties who lack the resources of the major industry stakeholders. NASUCA and the OCC understand the need for certainty and timeliness in settling these significant issues. However, a rush to judgment without proper foundation will adversely impact all stakeholders, including the consumers whom NASUCA members and the OCC represent. The needs of the consumers, more often assumed than addressed in the federal regulatory regime, are deserving of the Commission's special consideration here.

Wherefore, in view of the foregoing and the current compressed time frame between the comment and reply comment due dates, NASUCA and the OCC respectfully request the Commission to extend the time in which to file reply comments to November 2, 2004. Such an extension is necessary to enable counsel to adequately respond to newly discovered initial comments, not currently in the ECFS.

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